

FILED

BEFORE A HEARING OFFICER  
OF THE SUPREME COURT OF ARIZONA

OCT 03 2007

HEARING OFFICER OF THE  
SUPREME COURT OF ARIZONA  
BY QJW

IN THE MATTER OF A MEMBER )  
OF THE STATE BAR OF ARIZONA, )

ROBERT G. ROBINSON, )  
Bar No. 003457 )

No. 06-2074

RESPONDENT. )

HEARING OFFICER'S REPORT

PROCEDURAL HISTORY

No formal complaint has been filed in this case. An Order of Probable Cause for failure to cooperate with the State Bar's investigation was entered on May 9, 2007, after a determination that any underlying ethical charges were unsupportable, notwithstanding the lack of a response from Respondent. The parties have filed a Tender of Admissions and Agreement for Discipline and Joint Memorandum in Support of Agreement for Discipline by Consent on August 22, 2007. No hearing has been held in this matter.

FINDINGS OF FACT

1. At all times relevant, Respondent was an attorney licensed to practice law, having been admitted to practice in Arizona on September 29, 1973.

2. Based on an complaint in a letter dated December 23, 2006, Respondent was notified by the State Bar on January 17, 2007 and given 20 days to respond.

1           3.       Respondent failed to respond and was notified on February 21, 2007  
2 that he would be given an additional 10 days to respond.

3           4.       Respondent again made no response. Another letter was sent to  
4 Respondent on March 16, 2007, warning him his failure to respond would be a  
5 grounds for discipline and giving him 10 additional days.

6           5.       Respondent made no response.

7           6.       After two subsequent phone calls to Respondent by Bar Counsel,  
8 Respondent still made no response. During one of those phone calls Respondent  
9 said he had prepared a response and would mail it in.

10          7        After the issuance of an Order of Probable Cause, Respondent finally  
11 delivered his response on July 17, 2007.

12          8.       Respondent had been on probation in File Nos. 01-2144 and 03-  
13 0304, the term of which had concluded at the time the Order of Probable Cause  
14 was entered and Respondent had complied with the terms of that probation, but it  
15 has not been formally terminated.

### 16                               CONDITIONAL ADMISSIONS

17          Respondent's conduct violated Rule 42, *Rules of the Supreme Court*,  
18 specifically ER 8.1(b) and Rules 53(d) and (f), *Rules of the Supreme Court*, which  
19 he conditionally admits.

## **ABA STANDARDS**

The ABA *Standards* list the following factors to consider in imposing the appropriate sanction: (1) the duty violated, (2) the lawyer's mental state, (3) the actual or potential injury caused by the lawyer's misconduct, and (4) the existence of aggravating or mitigating circumstances. ABA *Standard* 3.0.

Standards 7.3 and 7.4 are applicable in this matter. Standard 7.3 states "reprimand [censure] is generally applicable when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system." Standard 7.4 states, "admonition [informal reprimand] is generally appropriate when a lawyer engages in an isolated instance of negligence that is a violation of a duty owed as a professional, and causes little or no actual injury or potential injury to a client, the public, or the legal system."

## **AGGRAVATING AND MITIGATING FACTORS**

Considering the aggravating and mitigating factors in this case, pursuant to *Standards* 9.22 and 9.32, respectively, this Hearing Officer agrees with the parties that the following are applicable.

As aggravating factors:

- (a) 9.22(a) – history of prior misconduct
- (b) 9.22(1) – substantial experience in the practice of law

As mitigating factors:

1 (a) 9.32(b) – absence of dishonest or selfish motive

2 This Hearing Officer also agrees that in considering the *Standards* in light  
3 of the aggravating and mitigating factors and the absence of any underlying  
4 ethical misconduct a sanction of censure in this case is warranted.  
5

6 **PROPORTIONALITY REVIEW**

7 To have an effective system of professional sanctions, there must be  
8 internal consistency, and it is appropriate to examine sanctions imposed in cases  
9 that are factually similar. *Peasley, supra*, 208 Ariz. at 33, 90 P.3d at 772.  
10 However, the discipline in each case must be tailored to the individual case, as  
11 neither perfection nor absolute uniformity can be achieved. *Id.* 208 Ariz. at 61,  
12 90 P.3d at 778 (citing *In re Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600, 614 (2002); *In*  
13 *re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983)).  
14  
15

16 Two cases are called to the Hearing Officer's attention *In re Bayless*, SB-  
17 03-0098-D (2003), and *In re Fuller*, SB-97-0065-D (1997), are factually similar –  
18 the sole violation being the failure to cooperate - and resulted in sanctions of  
19 censure.  
20

21 **RECOMMENDATION**

22 The purpose of lawyer discipline is not to punish the lawyer, but to protect  
23 the public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859  
24 P.2d 1315, 1320 (1993). It is also the objective of lawyer discipline to protect the  
25 public, the profession and the administration of justice. *In re Neville*, 147 Ariz.

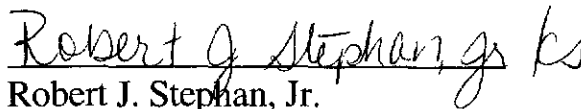
1 106, 708 P.2d 1297 (1985). Yet another purpose is to instill public confidence in  
2 the bar's integrity. *Matter of Horwitz*, 180 Ariz. 20, 29, 881 P 2d 352, 361  
3 (1994).  
4

5 In imposing discipline, it is appropriate to consider the facts of each case,  
6 the American Bar Association's *Standards for Imposing Lawyer Sanctions*  
7 (*"Standards"*) and the proportionality of discipline imposed in analogous cases.  
8  
9 *Matter of Bowen*, 178 Ariz. 283, 286, 872 P.2d 1235, 1238 (1994).

10 Upon consideration of the facts, application of the *Standards*, including the  
11 aggravating and mitigating factors, and a proportionality analysis, this Hearing  
12 Officer recommends acceptance of the Tender of Admissions and Agreement for  
13 Discipline by Consent which provides for the following:  
14

- 15 1. Respondent shall receive a censure.
- 16 2. Respondent shall pay all costs and expenses incurred in the disciplinary  
17 process as stated in the State Bar's Statement of Costs.  
18
- 19 3. The State Bar will file a Notice of Termination of Probation in File Nos.  
20 01-2144 and 03-0304.

21 DATED this 3<sup>rd</sup> day of October, 2007.  
22

23   
24 Robert J. Stephan, Jr.  
25 Hearing Officer 9R

1 Original filed with the Disciplinary Clerk  
2 this 3rd day of October, 2007

3 Copy of the foregoing was mailed  
4 this 4th day of October, 2007, to:

5 Matthew E. McGregor  
6 Staff Bar Counsel  
7 State Bar of Arizona  
8 4201 N 24<sup>th</sup> Street, Suite 200  
9 Phoenix, AZ 85016-6288

10 Ralph Adams  
11 520 East Portland Street, Suite 200  
12 Phoenix, AZ 85004-0001  
13 Respondent's Counsel

14 By CSoto  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25